

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THE HON. GEORGE H. WU, JUDGE PRESIDING

Evangeline Red, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. CV-10-01028-GW-AGR
)	
Kraft Foods Inc. et al.,)	
)	
Defendants.)	
)	
_____)	
AND RELATED CASE.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Thursday, May 30, 2013; 9:17 A.M.

Status Conference

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1 **LOS ANGELES, CA.; THURSDAY, MAY 30, 2013; 9:17 A.M.**

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3 THE COURT: Let me call the matter of Red versus
4 Kraft. On the phone we have?

5 MR. WESTON: This is Gregory Weston.

6 MR. LEE: Good morning, Your Honor. Ken Lee on
7 behalf of the defendant Kraft Foods.

8 THE COURT: Let me ask plaintiff's counsel. What
9 does the plaintiff plan to do at this point?

10 MR. WESTON: Well, Your Honor, we'd like to ask
11 the court to set a trial date and lift the discovery stay
12 that's been in place in the case for a few years now.

13 THE COURT: All right. What's the defense
14 response?

15 MR. LEE: Your Honor, this case is at this point,
16 now that you've denied class certification, where it's
17 probably less than \$100. There is no point in incurring
18 additional discovery costs or summary judgment or trial.

19 You had directed the parties to settle the
20 individual matters back in December. We've always wanted a
21 damages estimate from them. We never got it. We made the
22 settlement offer in December. They countered. We countered
23 again on January 22nd. We haven't heard anything in
24 response from the plaintiffs.

25 Your Honor, what we would suggest, Your Honor, is

1 perhaps you can tell the parties to try to settle again and
2 perhaps set a date for a settlement conference with a
3 magistrate judge.

4 THE COURT: Well, let me just do a couple of
5 things. One, the defendant is not making an argument that
6 the court lacks jurisdiction at this point in time or that
7 the case remains on the court's docket purely as a matter of
8 some sort of supplemental jurisdiction the court exercises
9 by way of discretion at this point, are you?

10 MR. LEE: There is an issue, but I think at this
11 point we would think there is jurisdiction.

12 THE COURT: Okay. Then the next question is that
13 I can lead the horse to water but I can't make the horse
14 drink, not that Mr. Weston is a horse.

15 MR. LEE: Your Honor, maybe that's what we would
16 suggest, perhaps scheduling a settlement conference with the
17 magistrate judge. I don't think either party would like to
18 incur the wrath of the magistrate judge over a case now that
19 is worth very little.

20 THE COURT: Let me hear from the plaintiffs'
21 counsel.

22 MR. WESTON: Well, Your Honor, we did have a
23 private mediation early in the case. It wasn't successful.
24 We've had other exchanges. But, generally speaking,
25 plaintiff is not really willing to settle the case on an

1 individual basis mainly because, with all due respect, we
2 think we will be able to reverse the order denying class
3 certification on appeal. That's something that we can't do
4 right now until after trial.

5 THE COURT: Let me just put it this way. Why
6 don't both sides agree that the individual claims would be
7 dismissed without prejudice if both sides would agree that
8 no statute of limitations or other particular problems would
9 prevent the plaintiff from renewing the individual claims
10 after some action is taken on the appeal level as to the
11 class claims and do it in that fashion?

12 MR. WESTON: Well, Your Honor, I haven't really
13 thought that through. But plaintiff also have been I think
14 patiently waiting to take discovery on her claims for a long
15 time. And the fact that her individual claims are of low
16 value I don't think means that we can't have any merits
17 discovery at all. The discovery that Mr. Lee referenced was
18 limited to class discovery. In fact, we had a motion to
19 compel that was denied in part because the discovery went
20 into merits issues.

21 THE COURT: Let me just stop you.

22 At this point in time what are the individual
23 claims based on?

24 MR. WESTON: The Consumer Legal Remedies Act and
25 the unfair competition law and the false advertising law.

1 THE COURT: Under which of those statutes would
2 your client be able to get any form of monetary relief?

3 MR. WESTON: All of those statutes provide for
4 monetary relief. The CLRA has the most extensive monetary
5 relief in the sense that it offers statutory and punitive
6 damages in addition to the restitution offered by the other
7 statutes.

8 THE COURT: Yes, but the restitution offer in this
9 particular situation insofar as an individual claim is
10 concerned would be, what, assuming that she's been a
11 lifetime consumer of the goods would be less than \$100?

12 MR. WESTON: I actually think it's a fair amount
13 of money going back. First of all, there is two plaintiffs.
14 And second of all, they've been buying these products with a
15 fair amount of regularity for years. So, I would estimate
16 off the top of my head that the number is probably closer to
17 2- or \$3,000.

18 THE COURT: Well, but the only problem is that the
19 claims would not be based on the total purchase. The claims
20 would be based upon the limited basis for her injury at this
21 point in time. In other words, her individual claims are
22 not the broad claims that the case was originally brought
23 upon because most of those claims have already been
24 dismissed by the court.

25 This would be a very, very limited basis for her

1 claims at this point. So, even if assuming that in fact she
2 had consumed -- let's be generous, \$5,000 worth of the
3 product, she wouldn't be anywhere entitled to \$5,000 worth
4 of restitution based on what her claims are.

5 MR. WESTON: -- on the damages issue when the
6 plaintiff hasn't had the benefit of briefing or discovery on
7 it.

8 THE COURT: Well, but let me just put it this way.
9 The plaintiff would know how much she spent and that number
10 you can't get from the defendants. So, she knows what her
11 potential damages are. And so if in fact she's consumed
12 \$5,000 dollars worth of the product in her lifetime, then
13 she knows what the possible amount of the restitution can
14 be.

15 Let me ask. Is there a form of -- some form of
16 settlement offer, a binding settlement offer such that if
17 the defense makes at this point in time that any additional
18 attorney's fees, et cetera, passed this point in time if the
19 defense wins would have to be borne by the plaintiff?

20 MR. WESTON: The offer that defendant extended, I
21 wouldn't even call a firm offer. But it certainly wasn't
22 premised on Rule 68.

23 THE COURT: Well, but that doesn't preclude them
24 from making one.

25 Let's just put it this way. I will reference you

1 guys to the magistrate to see if you guys can resolve it.
2 But, frankly, the amount of money that's currently involved
3 is not worth it. But I can't force you to dismiss out the
4 case if you want to go forward. But there are obviously
5 going to be potential consequences depending on how the case
6 is resolved.

7 But it seems to me that if your primary concern is
8 with the class that the court denied, et cetera, et cetera,
9 in the prior rulings, it seems to me that the easiest way to
10 get around that would be just simply for a dismissal without
11 prejudice with both sides agreeing that the statute of
12 limitations and all of those other type of limitations would
13 not be applicable starting from this point on.

14 MR. WESTON: Your Honor, I'm definitely not
15 opposed to settlement and I would like to keep trying on it.
16 But I think there ought to be some pressure on the defendant
17 to do so. And the opening of discovery, both allows us to
18 know -- because plaintiff does want a class settlement and
19 would be very happy to obtain a class settlement.

20 THE COURT: The problem is you are not going to
21 get a class settlement unless there is a reversal by the
22 circuit court. So you are not being realistic in that
23 regard.

24 So what I will do is this. I will reference both
25 sides to the magistrate judge to see if the magistrate judge

1 can resolve this matter. I will set another status
2 conference for, let's say, August 1st at 8:30 and we will
3 see where we are at that point in time. All right.

4 MR. LEE: Thank you, Your Honor.

5 MR. WESTON: Thank you, Your Honor.

6 THE COURT: Okay. Thank you.

7 (At 9:25 a.m. proceedings were adjourned.)

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: June 28, 2013

/s/ WIL S. WILCOX
U.S. COURT REPORTER
CSR NO. 9178

WIL S. WILCOX, OFFICIAL FEDERAL REPORTER

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<p>S</p> <p>San [1] 2/5</p> <p>say [1] 9/2</p> <p>scheduling [1] 4/16</p> <p>second [1] 6/14</p> <p>Section [1] 10/5</p> <p>see [3] 8/1 8/25 9/3</p> <p>seems [2] 8/7 8/9</p> <p>sense [1] 6/5</p> <p>set [3] 3/11 4/2 9/1</p> <p>settle [3] 3/19 4/1 4/25</p> <p>settlement [9] 3/22 4/2 4/16 7/16 7/16</p> <p>8/15 8/18 8/19 8/21</p> <p>she [5] 7/1 7/3 7/9 7/10 7/13</p> <p>she's [2] 6/10 7/11</p> <p>sides [4] 5/6 5/7 8/11 8/25</p> <p>simply [1] 8/10</p> <p>situation [1] 6/9</p> <p>so [7] 6/15 7/1 7/10 7/11 8/17 8/22 8/24</p> <p>some [4] 4/8 5/10 7/15 8/16</p> <p>something [1] 5/3</p> <p>sort [1] 4/8</p> <p>speaking [1] 4/24</p> <p>spent [1] 7/9</p> <p>Spring [1] 1/23</p> <p>starting [1] 8/13</p> <p>STATES [3] 1/1 10/6 10/10</p> <p>status [2] 1/20 9/1</p> <p>statute [2] 5/8 8/11</p> <p>statutes [3] 6/1 6/3 6/7</p> <p>statutory [1] 6/5</p> <p>stay [1] 3/11</p> <p>stenographically [1] 10/7</p> <p>stop [1] 5/21</p> <p>Street [2] 1/23 2/8</p> <p>successful [1] 4/23</p> <p>such [1] 7/16</p> <p>suggest [2] 3/25 4/16</p> <p>Suite [2] 2/4 2/8</p> <p>summary [1] 3/18</p> <p>supplemental [1] 4/8</p>	<p>U</p> <p>U.S [2] 1/22 10/17</p> <p>Under [1] 6/1</p> <p>unfair [1] 5/25</p> <p>UNITED [3] 1/1 10/6 10/10</p> <p>unless [1] 8/21</p> <p>until [1] 5/4</p> <p>upon [2] 6/20 6/23</p> <p>us [1] 8/17</p> <p>V</p> <p>value [1] 5/16</p> <p>versus [1] 3/3</p> <p>very [4] 4/19 6/25 6/25 8/19</p> <p>W</p> <p>waiting [1] 5/14</p> <p>want [2] 8/4 8/18</p> <p>wanted [1] 3/20</p> <p>was [3] 5/17 5/19 6/22</p> <p>wasn't [2] 4/23 7/21</p> <p>water [1] 4/13</p> <p>way [5] 4/9 5/5 7/8 7/25 8/9</p> <p>we [16]</p> <p>we'd [1] 3/10</p> <p>We've [2] 3/20 4/24</p> <p>Well [7] 3/10 4/4 4/22 5/12 6/18 7/8 7/23</p> <p>went [1] 5/19</p> <p>were [1] 9/7</p> <p>West [1] 2/8</p> <p>WESTERN [1] 1/3</p> <p>WESTON [4] 2/3 2/3 3/5 4/14</p> <p>westonfirm.com [1] 2/6</p> <p>what [9] 3/8 3/25 4/15 5/22 6/10 7/4 7/10</p> <p>7/13 8/24</p> <p>What's [1] 3/13</p> <p>when [1] 7/5</p> <p>where [2] 3/16 9/3</p> <p>which [1] 6/1</p> <p>Why [1] 5/5</p> <p>Wil [2] 1/22 10/17</p> <p>Wilcox [2] 1/22 10/17</p> <p>will [6] 5/2 7/25 8/24 8/24 9/1 9/2</p> <p>willing [1] 4/25</p> <p>wins [1] 7/19</p> <p>without [2] 5/7 8/10</p> <p>words [1] 6/21</p> <p>worth [5] 4/19 7/2 7/3 7/12 8/3</p> <p>would [20]</p> <p>wouldn't [2] 7/3 7/21</p> <p>wrath [1] 4/18</p>	
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